STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ADOPTION OF 83 ILLINOIS	)	
ADMINISTRATIVE CODE 732	)	**Docket No. 01-0485**
CUSTOMER CREDITS	)	

REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and, pursuant to Section 200.830 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions to the Administrative Law Judge's Proposed Order ("Proposed Order" or "PO") issued on October 24, 2001.

Briefs on Exceptions, together with replacement language for the Proposed Order were filed by the Illinois Bell Telephone Company ("Ameritech"), Verizon North Inc. and Verizon South Inc. ("Verizon"), AT&T Communications of Illinois, Inc. ("AT&T"), Allegiance Telecom Of Illinois, Inc., McLeodUSA Telecommunications Services, Inc. and RCN Telecom Services of Illinois, Inc. (collectively, "Joint CLECs"), Citizens Telecommunications Company of Illinois ("Citizens"), WorldCom, Inc. ("WorldCom"), the Illinois Independent Telephone Association ("IITA"), Harrisonville Telephone Company ("Harrisonville"), and the City of Chicago, People of the State of Illinois and the Citizens Utility Board (collectively, "GCI").

Staff hereby responds to the various arguments raised by these parties. The Exceptions will be discussed in the order they apply to the Proposed Order. (Staff also notes that it makes no additional comment on Exceptions parties address to the Proposed Order's determinations made in Part II.A re the Section 732.10 definition of "Appointment," Part II. B. re the Section 732 .10 definition of "Basic Local Exchange Service," Part II. H. re the Section 732.30(c) provision for the "24-hour notice period," or Part II. K. re the Section 732.60 "Reporting" requirements.)

I. THE PROCEEDING WAS PROPER

Verizon's Position

Verizon argues that the permanent rule to be adopted by the Commission in this proceeding should be substantially the same as the emergency rule adopted and subsequently amended by the Commission in its orders issued on July 10, 2001 and July 25, 2001, respectively. (Verizon BOE at 4.) Verizon would limit the Commission to revisions that are based solely on "JCAR modifications and specific Commission clarifications." Id. To the extent that the Commission may want to consider a more expansive revision of the rules adopted at first notice, Verizon argues, "such an exercise should be conducted as part of a general rulemaking." Id. According to Verizon, a general rulemaking would apparently always include verified pre-filed testimony and hearings. Essentially, Verizon argues that the permanent rule adopted under the Commission's emergency rulemaking authority must be substantially the same as the initial rule filed. By extrapolation, the comments to be filed should also be limited in scope to clarifications and minor modifications.

Although Verizon concedes that the procedure of accepting comments in lieu of verified pre-filed testimony, without hearings, would be appropriate, Verizon nevertheless argues that this is so only if the comments were somehow limited to the emergency rule initially adopted.

> In recognition of the short period of time available to develop a permanent rule, the procedure was established for the parties to submit comments: no pre-filed testimony was filed, nor did evidentiary hearings take place. This procedure would be proper if the *focus was limited* to the requirements and terms of the existing emergency rule. (Emphasis added)
> Id. at 2.

Verizon also argues that "…there is no evidence in this record upon which to make a determination whether this rule is burdensome to a particular party." Id. As support for this argument, Verizon points out that the comments are unverified and untested. Id. Finally, Verizon argues that the permanent rule suggested by the proposed order "goes well beyond the specific intent of the Commission (that is, providing the mechanism for customer credits) when it promulgated the Part 732 Emergency Rules (i.e., the suggested rule mandates a host of reporting requirements)." Id.

Staff's Response

Staff disagrees. The authority of the Commission is not so limited and the rulemaking procedures in place provide no such limitation on the scope of the revisions to the first notice rule. 5 ILCS 100/5-40. Staff posits that Verizon's objections stem largely from an improper understanding of the procedures governing this rulemaking.

Verizon misunderstands the procedures employed in this proceeding. This proceeding is being conducted in accordance with the Commission's general rulemaking authority. 5 ILCS 100/5-40. Since the emergency rule that was previously adopted will expire 150 days after its effective date, the Commission seeks to implement this permanent rule without a "gap period" but it is doing so under its general rulemaking authority. Id. See, also, 5 ILCS 100/5-45. The rule adopted pursuant to this authority is not limited in scope to the emergency rule it will ultimately replace. Thus, Verizon's reliance on its argument that the proposed permanent rule goes beyond the intent of the Commission is misplaced. Indeed, emergency rules are often stripped down, non-controversial versions of the permanent rule ultimately to be implemented since the intention of the Commission with respect to the emergency rule is to provide the necessary relief immediately and to allow the permanent rule to provide other requirements that may be more controversial or may require the implementation of procedures not specifically set forth in the statute. In this case, the emergency rule provided for customer credits to be paid pursuant to the statute, and mirrored the statute's language, but allowed the reporting requirements to be fleshed out in the permanent rule.

Moreover, it is undisputed that, pursuant to the Illinois Public Utilities Act ("PUA"), the Illinois Administrative Procedure Act ("IAPA") governs the Commission's rulemaking procedures:

> The Commission, or any commissioner or hearing examiner designated by the Commission, shall have power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Act, or by any other Acts relating to public utilities subject to such rules and regulations as the Commission may establish. In the conduct of any investigation, inquiry or hearing the provisions of the Illinois Administrative Procedure Act,[1] including but not limited to Sections 10-25 and 10-35 of that Act,[2] shall be applicable and the Commission's rules shall be consistent therewith.
> 220 ILCS 5/10-101.

Furthermore, the IAPA specifically establishes a procedure for rulemaking and that procedure does not require the filing of verified testimony or the holding of public hearings. 5 ILCS 100/5-40. Nor does the IAPA require that a permanent rule must be substantially the same as the emergency rule that it replaces. Id. See, also, 5 ILCS 100/5-45. The IAPA provides, in pertinent part, that:

[1] 5 ILCS 100/1-1 et seq.
[2] 5 ILCS 100/10-25 and 100/10-35.

> During the first notice period, the agency shall accept from any interested persons data, views, arguments, or comments. These may, in the discretion of the agency, be submitted either orally or in writing or both. The agency shall consider all submissions received. The agency shall hold a public hearing on the proposed rulemaking during the first notice period if (i) during the first notice period, the agency finds that a public hearing would facilitate the submission of views and comments that might not otherwise be submitted or (ii) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government that may be affected.
> 5 ILCA 100/5-40(b)(5)

Since no requests for a public hearing have been made and the Commission has not determined that a hearing would “facilitate the submission of views and comments that might not otherwise be submitted”—hearings are not required. Id. Furthermore, the IAPA specifically permits the submission of comments, without in any way requiring that they be verified. Moreover, the Commission must consider all submissions made in the proceeding, i.e., data, views, arguments, or comments. Id.

Verizon provides no support for its theory that the procedures used in this rulemaking are proper only if focused on the requirements and terms of the existing emergency rule. (Verizon BOE at 2.) Even assuming that Verizon’s theory is correct, Verizon does not explain in what manner, or under what authority, the focus of this procedure of accepting comments could be limited. Indeed, it is difficult to imagine not only who would determine the limitations to be imposed in order to focus submitted comments but also by what means or standards this determination would be made. Furthermore, the legality of any such limitation is suspect in light of the requirement of the IAPA that the Commission shall consider all submissions received (as opposed to those submissions that Verizon argues should be limited in focus to the existing emergency rule).

In sum, Verizon's arguments regarding the impropriety of the procedures adopted in this rulemaking are incorrect and are contrary to the procedures expressly laid out in the IAPA. As a result, Verizon's proposal for a wholesale rejection of the proposed order should not be adopted.

II. RESPONSES TO EXCEPTIONS

Part II. C. Section 732.10 "Emergency Situation"

The IITA, Harrisonville, Ameritech and GCI address Exceptions to the Proposed Order's conclusions regarding the definition of "emergency situation." The main target of the various comments is the ALJ's determination that strikes or other work stoppages constitute "emergency situations" which would provide a limited basis (five days) for exemptions from paying customer credits under Section 732.30(c). In particular, the IITA and Harrisonville argue that this amounts to regulation of labor relations that is pre-empted by federal labor law. They argue that strikes and other work stoppages must be considered exempted "emergency situations" for their full durations. (IITA BOE at 1 - 4; Harrisonville BOE at 1 - 6.) On the other hand, GCI posits that strikes and other work stoppages should not serve as bases for any exemption from customer credits. (GCI BOE at 2 – 4.) Ameritech takes a middle ground, agreeing that strikes and other work stoppages should be included, and that the limitation imposed is acceptable, if the rule would also provide for petitions to extend the exemption beyond five days. (Ameritech BOE at 1 – 4.)

IITA and Harrisonville Position

In challenging the definition of "emergency situation" and its classification of only the first five days of a work stoppage as an emergency, the IITA and Harrisonville correctly observe that state statutes, administrative regulations, and judicial decisions affecting the collective bargaining relationship may be preempted by federal labor laws in appropriate cases. See, Lodge 76, International Association of Machinists & Aerospace Workers, AFL-CIO, v. Wisconsin Employment Relations Commission, 427 U.S. 132, 49 L. Ed. 2d 396, 96 S. Ct. 2548 (1976) ("Machinists"); San Diego Building Trades Council v. Garmon, 359 U.S. 236, 3 L. Ed. 2d 775, 79 S. Ct. 773 (1959). With respect to the definition of "emergency situation" in the Proposed Order, these two parties contend that the definition intrudes on the complex scheme of labor regulation established by Congress in, among other laws, the National Labor Relations Act. Indeed, Harrisonville asserts that principles of preemption require that the definition be amended to expressly classify work stoppages of any duration as emergencies, during which no liability for customer credits would arise. Federal law does not compel that result, however, and the definition formulated by the ALJ in the Proposed Order may stand.

Staff's Response

The Supreme Court "has recognized that it 'cannot declare pre-empted all local regulation that touches or concerns in any way the complex interrelationships between employees, employers, and unions; obviously, much of this is left to the States.' [Citation.]" Metropolitan Life Insurance Co. v. Massachusetts, 471 U.S. 724, 757, 85 L. Ed. 2d 728, 751, 105 S. Ct. 2380, 2398 (1985). Accordingly, courts in a variety of cases, have left intact state laws, decisions, and regulations that may be said to have some incidental or residual effect on the collective bargaining relationship. In Southwestern Bell Telephone Co. v. Arkansas Public Service Commission, 824 F.2d 672 (8th Cir. 1987) (Southwestern Bell), the court of appeals considered whether the Arkansas Public Service Commission acted properly in reducing the expenses that a public utility could recover for wages and benefits that were the result of collective bargaining. The company in that case argued that the commission's action in reducing the recoverable expenses was preempted by the National Labor Relations Act because of its effect on the collective bargaining process. The court rejected the company's preemption arguments.

The Southwestern Bell court recognized that "a tension exists between federal labor laws protecting the collective bargaining process and state laws charging regulatory bodies with the task of assessing the reasonableness of a public utility's expenses, rates, and revenues." Southwestern Bell, 824 F.2d at 674. Nonetheless, the court concluded that the state commission's reduction of the company's recoverable expenses did not impermissibly intrude on the collective bargaining process and was not preempted under either Garmon or Machinists. The court noted that the commission's order had no relation to the substantive portions of the underlying collective bargaining agreement and thus did not encroach on federal enforcement of the National Labor Relations Act. Southwestern Bell, 824 F.2d at 674. The court also concluded that the commission's order was "not an intrusion on the economic self-help measures available to labor and management that Congress meant to be unregulated." Southwestern Bell, 824 F.2d at 674. Rejecting the company's argument that the reduction of recoverable expenses would affect the negotiating process and alter the company's bargaining position, the court explained:

> Nothing in the Commission's order encroaches upon either party's ability to use economic pressure in future negotiations to gain concessions from the other. The Company remains free to resist the union's demands, and [the union] may authorize a strike if its terms are not met. Furthermore, the Commission has not vetoed the wage agreement. As we have already pointed out, the Company stipulated that notwithstanding the Commission's order, it is obligated to pay the bargained-for wages. Finally, nothing in the NLRA guarantees that wages agreed upon in collective bargaining will be recovered from consumers, whether the business is regulated or not. This, therefore, is not a case where either Machinists or Garmon preemption is appropriate. Southwestern Bell, 824 F.2d at 675.

The same reasoning is applicable here. The definition of "emergency situation," and the inclusion or exclusion of work stoppages within the meaning of that term, does not intrude on the duties and responsibilities of the NLRB, or compel a party's assent to any particular provision in a collective bargaining agreement. Indeed, the matter in question here would appear to have less effect on the company, and on the collective bargaining process, than the commission action at issue in Southwestern Bell, in which the court dismissed a similar preemption claim.

Finding preemption in these circumstances could threaten a variety of legitimate state regulations. The implications of an argument like the one raised in this proceeding were explored by the court of appeals in Massachusetts Nurses Association v. Dukakis, 726 F.2d 41 (1st Cir. 1984) (Massachusetts Nurses), as noted by the court in Southwestern Bell. In Massachusetts Nurses, the court rejected a challenge, made on preemption grounds, to a state law that established a method for reimbursing hospitals for their costs and that set a yearly amount the hospital could recover for patient care. As the court explained:

> [I]n any industry the price of whose product or service--such as electric power, telephone, natural gas, or even rent-controlled real estate--is regulated, a state would find its regulatory system vulnerable to preemptive attack on the ground that the overall control of price was too inhibiting an influence on collective bargaining. Logic, however, would carry beyond simple price control. Any state or municipal program that substantially increased the costs of operation of a business in a competitive market would be similarly vulnerable to the preemption argument. Clean air and water laws, selective cutting requirements in forest operations, industrial safety standards, tax increases--all pro tanto hobble collective bargaining in that they constitute part of the universe in which collective bargaining takes place, just as do general prosperity or depression. But they do not add to or detract from the rights, practices, and procedures that together constitute our collective bargaining system. Massachusetts Nurses Association, 726 F.2d at 45.

Finally, Cannon v. Edgar, 33 F.3d 880 (7th Cir. 1994), also cited by the IITA and Harrisonville, is not to the contrary. That case involved an Illinois statute, the Burial Rights Act, that directed cemeteries and gravediggers to negotiate for the establishment of a group of workers who would prepare gravesites during work stoppages, to accommodate persons whose religious beliefs required burial shortly after death. The court found the statute to be preempted by federal law under both the Garmon and the Machinists lines of authority. The court explained that the statute improperly regulated a particular term of the collective bargaining agreement and compelled the parties to reach an agreement on that term. Cannon, 33 F.2d at 884-85. See, also, Golden State Transit Corp. v. City of Los Angeles, 475 U.S. 608, 89 L. Ed. 2d 616, 106 S. Ct. 1395 (invalidating, on preemption grounds, city's action in conditioning renewal of taxi company's franchise agreement on company's settlement of strike).

The provision at issue in the present case is far different from the statute invalidated in Cannon. The ALJ's definition of "emergency situation" in the Proposed Order does not intrude on the collective bargaining process or otherwise compel labor and management's agreement to a particular provision. The rule merely establishes a formula for determining when customer credits will be incurred during work stoppages. Just as a public utility commission may disregard parts of a collective bargaining agreement in setting utility rates (Southwestern Bell), there is no legal requirement that customer credits be disallowed during all of, or any portion of, a work stoppage. To decide otherwise would effectively undermine many aspects of state regulation of utility services.

Moreover, to further illustrate the difficulties inherent in IITA's and Harrisonville's arguments, consider that no matter what position the Commission takes regarding work stoppages, it could be argued that labor relations would be affected. If the Commission were to continuously extend the period beyond 5 days – as suggested by Ameritech --, and especially if the Commission permitted an emergency situation for the full duration of any strike or work stoppage, then labor would argue that the Commission was providing unfair leverage to management. By the same token, if the Commission did not include work stoppages at all, IITA and Harrisonville would complain, as they have here, that the Commission was undeservedly favoring labor over management. Thus, if the IITA and Harrisonville were correct in their initial premise, then there is no action the Commission could take which would not conflict with federal labor practice. Fortunately, as established above, the IITA and Harrisonville are clearly wrong.

Staff continues to believe that the decision whether to include work stoppages in the definition of "emergency situation" is a close question, subject to a number of competing concerns, including the LEC's obligation to provide service as a regulated entity. Staff, however, finds no legal impediment to the definition formulated by the ALJ.

Moreover, Staff finds reasonable the judge's compromise of including work stoppages within a credit exemption but limiting the exemption's applicable duration to 5 days. Further, Staff believes that this compromise reflects an effective balancing of the competing interests of the carriers, their employees and customers.

Part II.D. Section 732.10 "Monthly Recurring Charge"

Both Verizon and Ameritech take exception to the proposed order's conclusion that the Commission is federally preempted from including the end user common line charge ("EUCL charge") in the definition of monthly recurring charges for purposes of identifying the amount of the applicable monthly credit. (Verizon BOE at 6; Ameritech BOE at 5 - 8.)

Verizon's Position

Verizon argues that the Commission errs in defining monthly recurring charge to include the EUCL charge since "[t]he EUCL is not a basic local exchange service provided by Verizon." (Verizon BOE at 6.) Verizon posits that "[a]ccordingly, the EUCL does not fall within the definition of a service subject to a credit under Section 13-712" and that "…the Proposed Order concludes that the EUCL is somehow a service." Id.

Staff's Response

Staff disagrees. The EUCL charge remains a charge and is not somehow converted into a service simply because the Proposed Order includes this monthly charge in the definition of those monthly recurring charges to be credited to customers when there is a violation of service quality standards. Moreover, the EUCL charge is assessed with the provision of basic local exchange service.

Verizon misconstrues Section 13-712 of the PUA. Section 13-712 requires "customers to be credited by the telecommunications carrier for violations of basic local exchange service quality standards…." 220 ILCS 5/13-712(e). Section 13-712 also requires that the credits be based upon monthly recurring charges but does not define the term. 220 ILCS 5/13-712(e)(1).

Staff believes it is appropriate to include "EUCL" in the definition of monthly recurring charges. The monthly recurring charges on the customer's bill incurred with respect to basic local exchange service form the basis of the credit to be received by the customer and include the EUCL charge. In the event of a violation of basic local exchange service quality standards, the customer has not received the service for which the EUCL charge is designed to recover. In other words, the loss of the local service also means that access to the local loop for interstate traffic has also not been provided. Therefore, Staff believes that it is not appropriate for the customer to pay for a service that the customer was not provided; particularly where the failure to provide the service was the fault of the carrier.

Ameritech's Position

Ameritech argues that the proposed order's finding is incorrect "because the rates, terms and conditions of the interstate EUCL -- including the conditions under which the EUCL can be refunded to customers -- are exclusively within the jurisdiction of the FCC." (Ameritech BOE at 5.) Ameritech relies primarily upon an Illinois Appellate case that addressed the authority of the state Commission in connection with interstate rates and services. Staff takes the position that Ameritech misconstrues this case.

Staff's Response

Ameritech argues that Illinois Telephone Corp.[3] stands for the proposition that "only the FCC may order refunds of an FCC-regulated rate." Id. at 6. Ameritech further argues that the subject matter of that case is "refunds-not the setting of rates…." Id. Finally, Ameritech argues that Illinois Telephone Corp. resolves the issue of whether "…the Proposed Order's finding that 'it is inappropriate for consumers to pay for service which they did not receive' [is] sufficient to remove refunds of the interstate EUCL from the FCC's jurisdiction." Id. at 7. Ameritech mischaracterizes both the subject matter and the holding of Illinois Telephone Corp.

The subject of the case was a dispute between a payphone provider, ITA, and a long distance carrier, AT&T, over certain long distance charges that were alleged to be erroneously billed to ITA-provided payphones. "The Commission dismissed the complaint with respect to AT&T, finding that it lacked jurisdiction to adjudicate the validity of the international toll charges because such disputes were under the authority of the Federal Communications Commission (FCC)." 260 Ill. App. 3d at 922. The Court affirmed the Commission's finding stating that:

> ITC's dispute with AT&T involved international tariffs that are wholly outside of the Commission's jurisdiction. ITC's complaint against AT&T requested the Commission adjudicate 'false charges on COPTS lines for international calls,' and characterized its action as a 'billing dispute' with AT&T. Since the Commission has no authority to resolve disputes over international tariffs, the Commission correctly held that it did not have jurisdiction to adjudicate ITC's billing dispute with AT&T. Furthermore, the Commission's decision addressed only the question of Illinois Bell's equipment and services and, thus, AT&T as the long-distance carrier, was not a necessary party to that determination.
> 260 Ill. App. 3d at 922-923.

[3] Illinois Telephone Corp. and Darryl Henry. v. Illinois Commerce Commission, Illinois Bell Telephone Company, and AT&T Communications of Illinois, Inc., 260 Ill.App. 3d 919, 632 N.E.2nd 210, 198 Ill. Dec. 151 (1st Dist.1994).

By including the EUCL charge in the definition of monthly recurring charge, this Commission has in no way attempted to adjudicate disputes over the terms and conditions of international tariffs. Nor will the Commission's ruling result in any possibility that the Commission will resolve such disputes in the future. As Staff stated in its Reply Comments, at pages 9-10, requiring reimbursement of the EULC charge does not in any way alter the federal scheme or embroil the Commission in adjudication of federal tariffs because the carrier can elect to pay it out of its own funds.

Moreover, in this proceeding, the service that is subject to credit, basic local exchange service, is clearly within the jurisdiction of the Commission. Ameritech's reliance on the Illinois Telephone Corp. case is inappropriate since that case clearly addressed an interstate service, namely, international long distance. Ameritech's attempts to confuse the crediting of charges relating to a local exchange service with disputes over international long distance charges are misleading and should be disregarded.

Furthermore, as the Attorney General stated in its Reply Comments:

> The proposed rule requires the carrier to credit the consumer with a specified portion of the consumer's total recurring charges when the carrier fails to meet specified service quality standards, but *does not change the rates, terms or conditions of those recurring charges*. The EUCL, as part of the monthly recurring charge, is *simply a proxy* for a payment to the consumer for unacceptable service. (Emphasis added)
> (Attorney General Reply Comments at 5.)

In reality, Ameritech or any other carrier may well, by the terms of its federal tariff, be entitled to seek an exemption from the FCC on the basis of the service interruption but the terms of any such exemption are solely between the carrier and the FCC, and within its jurisdiction. See, Ameritech's Comments at Exhibit B, Section 4.1.5

(D) of the federal tariff attached thereto. However, it is neither necessary nor appropriate for this Commission to exercise jurisdiction over federal tariffs in order to establish that the consumer credit to be paid under state law will be in an amount that is equal to the sum of certain monthly recurring charges, including the amount of the EUCL charge. In essence, the amount of the EUCL charge is indeed merely a proxy for establishing an appropriate credit for failure to meet basic local exchange service quality standards.

Part II.E. Section 732.10 "Out Of Service"

GCI's Position

GCI indicates that the definition of "Out of Service" should not require the customer without service to report the out of service condition before the 24 hour time period begins. In addition, GCI argues that the burden should not be on the customer to contact the carrier and inform the carrier of the problem. GCI avers a customer in a multiple-unit building might not believe it necessary to contact a carrier if the customer believes the building's management has already contacted the carrier, and that forcing customers to call may overwhelm call centers. GCI reasons that carriers already have the information necessary to calculate from when the carriers learn of the outage. Finally, GCI also contends that the proposed order goes beyond the jurisdiction of the Commission when it requires notification by the customer as it provides a limitation on credits not in the statute. (GCI BOE at 4 - 5.)

Staff's Response

The burden to initiate repair service has always been on the customer to notify the carrier that a problem exists. To that end, information systems used by carriers to originate a trouble report and initiate the 24-hour clock have always triggered off of the customer's call to the carrier. Customers should already expect to notify the carrier if their telephone is not working properly, and are likely to contact the carrier very quickly if the telephone is not working at all, i.e., out of service.

The 100-unit building problem cited by GCI is a dilemma that can and should be handled by customer education efforts. Customers need to be informed of their obligation to report the status of their own telephone service. In a 100-unit building, there are likely to be more than 100 separate telecommunication service accounts. (And, more problematically, it is possible that more than one carrier provides service in this building. If the building manager informs only one such carrier, GCI's "solution" does not work.) GCI would put the burden on the carrier to research its records to determine all of the separate accounts that would be affected. This burden is much more onerous than the burden imposed on each customer to be responsible for reporting the status of his or her own service.

In addition, in the situation envisioned by GCI, Staff believes it is in the economic self-interest of the carrier to rapidly get a 100-unit building back on the network, which will tend to mitigate the problem. Staff also points out that a 100-unit building outage would most likely be caused by an act of third parties (e.g., dig-ins) or a severe storm, tornado, flood or fire, all of which would be excluded from the credit provisions of this Code Part 732.

Staff concurs with the Proposed Order's observation that, with GCI's position, the bright line would be lost. (Proposed Order at 19.) If GCI's proposal were adopted, it would then become an issue as to not just when the carrier knew about the outage, but when the carrier should have known about the outage (and how to prove it). GCI's recommendation injects a significant amount of uncertainty into the process. That uncertainty is non-existent under the Proposed Order's "bright line" of requiring the customer to notify the carrier.

Finally, GCI avers that the proposed order goes beyond the jurisdiction of the Commission as it provides a limitation on credits not in the statute. (GCI BOE at 5.) This position contorts the very nature of the rulemaking process and completely disregards the language used in 13-712(d)(2). The General Assembly directed the Commission to promulgate service quality rules, and that is the purpose of this rulemaking – to develop detailed rules consistent with the intent of the General Assembly. Regarding "out of service" specifically, the General Assembly stated that each carrier shall restore basic local exchange service for a customer within 24 hours of receiving notice that a customer is out of service (emphasis added). See, Section13-712(d)(2). For purposes of an enforceable rule – a rule that provides for a level of certainty sufficient to measure conformance – the Commission must accept that the appropriate "notice" must be specific to the customer accounts affected. The best way of achieving this notice is to require that the customer provide the notice.

The Proposed Order should not change.

Verizon's Position

Verizon urges the Commission to modify its definition of "out of service" to exclude the category of “cannot be called.” Verizon states that there is a critical difference between being totally out of service (i.e., no dial tone) and being able to only call out. Carriers will now have to treat both customers the same when prioritizing workload, which is not sound regulatory policy and results in a misapplication of the Act. (Verizon BOE at 6 - 7.)

Staff’s Response

No other party indicated the same problem with “cannot be called” as Verizon, leading Staff to conclude that other carriers understand it is sound regulatory policy to ensure that customers be able to both make and receive calls, and that the inability to do either (or both) constitutes an out-of-service condition. Staff considers the inability to receive calls to be a very serious matter, and the record is already complete regarding the difficulties with a customer’s being unable to receive calls.

The Proposed Order accepts these arguments and it should not be changed based on Verizon’s Exception.

Part II.F. Section 732.20 “Local Exchange Service Obligations”

Joint CLECs’ Position

Joint CLECs object to referencing the ILEC’s telephone directory for an explanation of the company’s duty to inform customers of the relevant time frame and customer compensation requirements to install, repair and keep appointments. (Joint CLEC BOE at 2 - 6.) Joint CLECs also object to informing a customer about relevant time frames, consumer compensation, and other remedies when the customer calls to arrange for installation, repair, or an appointment. Id.

Staff's Response

As Joint CLECs point out in their BOE, some CLECs do not publish directories. (Joint CLEC BOE at 4 - 5.) Those CLECs have obtained a waiver from 83 Illinois Administrative Code Part 735.180, Directories, and, as a result, the customers of those CLECs are listed in the ILEC's directory and the ILEC's directory is delivered to them. Staff believes that referring customers to a specific area of an ILEC's directory would not be an imposition on the CLECs. Currently, customers of CLECs who do not publish a directory rely upon the information set forth in the ILEC's directory. Moreover, directories often contain, and are required to contain, consumer information. See, Part 735.180(f). For example, page 5 of Ameritech's Springfield directory is a "Rights and Responsibilities" page that outlines several topics, including "Credits For Loss of Service". Staff agrees with the proposed order's finding that it would not be unreasonable or burdensome for a customer service representative to refer a customer to a "Rights and Responsibilities" section of a directory.

In the case where a CLEC does not publish a directory, Joint CLECs imply that the impact of the proposed order's requirement would perhaps be anti-competitive but Joint CLECs neither directly make the argument nor support it. (Joint CLEC BOE at 5; "(We assume the PO does not intend for a CLEC representative to refer the customer to the relevant ILEC's telephone directory for the information.)")

Furthermore, Staff believes that Joint CLECs misconstrue the proposed order's requirement. Section 730.20(e), as modified by the proposed order, provides in pertinent part, that "[t]he obligation to inform the customer that credits and other remedies may be available shall at a minimum be satisfied by directing the customer to the specific portion of the telecommunications carrier's telephone number directory." (PO at 26.) Staff takes the view that this does not require the CLEC to inform its customer of credit rights by means of a reference to a directory. Therefore, if there is any anti-competitive impact in directing a CLEC customer to an ILEC published directory, the CLEC can satisfy its obligations under Section 732.20(e) by informing the customer of its rights without reference to the ILEC directory. To clarify the proposed order to more clearly support Staff's interpretation of its language, Staff suggests the following minor revision:

> With respect to those carriers that publish their own directories, t~~T~~he obligation to inform the customer that credits and other remedies may be available shall at a minimum be satisfied by directing the customer to the specific portion of the telecommunications carrier's telephone number directory.
> (PO at 26.)

As a result, Staff recommends that the Commission reject Joint CLECs' position on this exception and retain the language in the proposed order, as modified herein.

In addition, Joint CLECs argue that providing relevant information up front projects a negative image of LECs to customers or potential customers and that this negative image may create "…an unintended barrier to entry for CLECs…" (Joint CLEC BOE at 3.) Staff believes that providing this information will, in fact, generate the opposite reaction from customers.

Informing customers of relevant time frames, customer compensation, and other requirements to install, repair, and keep appointments is a form of educating the customer as to what to expect from the company. This disclosure could be portrayed in a positive manner and benefit the relationship between customer and CLEC. Proactively providing this information to customers when contacting the company can portray the company as caring about its customers and being willing to take the time to educate them as to what to expect from the company. Moreover, informing the customer upfront may avoid customer confusion and possibly repeated phone calls to the company if a problem subsequently occurs. In a way, providing this information up front to customers is comparable to a person buying a vehicle or an appliance, where warranty information is provided at the time of the purchase, rather than requiring the customer to have to re-contact the company every time a problem arises to see if it is covered. Therefore, Staff recommends that the Commission reject Joint CLECs' position on this exception and retain the language in the proposed order.

Citizens' Position

Citizens objects to the addition of duties regarding repair and appointments to the Company's obligation to inform customers of its duty to meet certain timeframes, citing that the additional language goes beyond the Illinois General Assembly's intent and places significant burdens on the carriers and will cause customer confusion. (Citizens BOE at 1 – 4.) Citizens also objects to informing customers that credits and other remedies are available to the consumer if relevant timeframes are not met. (Citizens BOE at 6 – 10.)

Staff's Response

Section 13-712(d) of PA 92-0022, states that the rules shall, "at a minimum," require each telecommunications carrier to meet the requirements of this Section. The proposed Part 732 language requiring a carrier to inform customers of its duty to meet specific time frames for repair, appointments, and credits as well as applicable remedies for failure to do so ensures that Illinois consumers will be informed of their statutory rights. The requirements satisfy the legislature's intent that customers be able to derive the benefits of PA 92-0022. Therefore, the Commission should reject Citizen's position on this exception and retain the language in the proposed order.

Verizon's Position

Verizon objects to informing customers of its obligation to repair and meet appointments within a specific time frame and to notify customers about potential credits. (Verizon BOE at 7 – 10.)

Staff's Response

Verizon objects to the proposed order's requirements regarding customer education on the ground that these requirements will lead to customer confusion. (Verizon BOE at 8.) Verizon supports its argument by providing an example of potential negative consequences. Id. In this example, Verizon makes the following observation:

> Take the Verizon example of a customer that calls in for a repair and is informed, pursuant to the requirement in the Proposed Order, that if the work is not completed with[in] 24 hours, he will be entitled to a credit… Id.

Verizon's example incorrectly informs the customer of its rights and is, therefore, not persuasive. Customers need to be educated that they "may" be eligible for a credit and that certain exemptions "may" also apply, not that the credit is an absolute. Carriers that imply that a credit is absolute are purposely misleading customers, thereby facilitating customer confusion. Nothing in Part 732 prevents a company from preparing a document for distribution to a customer that explains the service quality standards, distribution of the credits, and possible exemptions, thereby shortening the explanation time to consumers. The Commission should, therefore, reject Verizon's position on this exception and retain the language in the proposed order.

Part II.G. Section 732.30 "Customer Credits"

The issue in this Section is whether customer credits, when due pursuant to Section 13-712 and this rule, should be specifically identified as being service quality related. Staff supported such a provision, and the Proposed Order, at page 30, finds it to be appropriate.

Worldcom's Position

Worldcom – which took no position on this issue during the Comment period -- takes exception to the Commission dictating specific language on a bill when a credit is issued under this rule as a "Service Quality Credit" or "S.Q. Credit", and identifying service quality credits differently than other credits. However, WorldCom does not object to clearly and separately identifying on a bill credits generally. (Worldcom BOE at 1 - 2.)

Staff's Response

Staff believes that it is important to differentiate between credits received by customers. As determined by the Proposed Order, there is value in requiring all carriers to identify the service quality credit in a specific and standard manne., Such a requirement is "not burdensome or unreasonable." (Proposed Order at 30.) This requirement will educate and assist consumers in identifying and confirming that they have received the credit. The Commission should reject Worldcom's position on this exception and retain the language in the proposed order.

Part II.I. Section 732.35 "ILEC/CLEC Reimbursement"

Joint CLECs' Positions

The Joint CLECs believe that if voluntary mediation before the Commission can only be triggered by a joint request of both parties, then Section 732.35(c)(3) needs to be modified to recognize that voluntary mediation may not occur with respect to some disputes, and that the dispute resolution process may move directly from negotiations between the LECs' representatives to pursuit of other remedies available under law. Accordingly, the Joint CLECs suggest that the following sentence should be added to the end of the fifth paragraph in Section II.I.7 of the PO:

> As a result of these changes, Section 732.35(c)(3) needs to reflect that voluntary mediation may not occur in the dispute resolution process; therefore, subsection (c)(3) should be revised to state: "At the conclusion of the voluntary mediation process, or within 35 calendar days from the date of notice of the dispute if the parties have not jointly requested voluntary mediation, either party may pursue any remedies available under the law.

Staff's Response

Staff has no objection to the recommendation that Section 732.35(c)(3) be modified to read:

> At the conclusion of the voluntary mediation process, or within 35 calendar days from the date of notice of the dispute if the parties have not jointly requested voluntary mediation, either party may pursue any remedies available under the law.

Verizon's Position

Verizon states that Part 732.35 is inconsistent with the Act and contrary to federal law. (Verizon BOE at 11.) Verizon does not argue about the merits of the recourse mechanism, but objects to the impact this would have on the interconnection agreement process. By implementing this language, Verizon argues that the proposed order absolutely negates any incentive the CLECs would have to negotiate this issue. Recent federal decisions have held that a state commission cannot undermine the negotiation/arbitration process by a rule such as this. (Verizon BOE at 12.)

Staff's Response

Verizon is repeating the argument it presented in its Comments. The ALJ already convincingly determined that Verizon's arguments should be rejected. (Proposed Order at 36 – 37.) Staff agrees with the ALJ that the language should not have a detrimental affect on the interconnection agreement negotiation process. In addition, Staff notes that no other party (which includes both ILECs and CLECs) to this proceeding share Verizon's concern.

The inclusion of the language is this Section was not optional. The CLECs made a convincing case that they were open to potentially irreparable financial harm if a reimbursement mechanism was not developed in this proceeding and at this time.

Further, the General Assembly required the parties to consider the mechanics of the reimbursement process <u>in this rulemaking</u> when it stated the following:

> If the violation of a basic local exchange service quality standard is caused by a carrier other than the carrier providing retail service to the customer, the carrier providing retail service to the customer shall credit the customer as provided in this Section. The carrier causing the violation shall reimburse the carrier providing retail service the amount credited the customer. When applicable, an interconnection agreement shall govern compensation between the carrier causing the violation, in whole or in part, and the retail carrier providing the credit to the customer.
> Section 13-712(e)(4).

Since not all ILEC/CLEC relationships are governed by interconnection agreements, the reimbursement mechanism and associated appeal processes had to be developed in the course of this proceeding. As the Proposed Order states at page 36:

> Very few, if any, interconnection agreements currently contain language addressing recourse credits. Agreements not containing such language can hardly be said to be "applicable" to situations where recourse credits are due. Moreover, credits are being paid now; CLECs should not have to wait until interconnection agreements are amended before receiving reimbursement.

The Proposed Order should not change.

Part II.J. Section 732.50 "Customer Education"

Ameritech's Position

Ameritech states exceptions to three aspects of the customer education requirements: 1) the requirement of providing customers with quarterly bill inserts until such time as new directories with the necessary information have been published; 2) the requirement that customers' monthly bills include a specific statement regarding local exchange carriers' obligations, plus the additional statement referring customers either to their directories (once the new directories have been published) or to the carrier itself (until the new directories have been published); and 3) the requirement to employ Staff's minimum language and to have Staff review language proposed by carriers not wishing to use Staff's language. (Ameritech BOE at 11 – 14.)

Staff's Response

Ameritech argues that the quarterly inserts would occupy a third of all possible inserts during a given year, thereby limiting the carrier's ability to provide information about other state and federal regulatory requirements. However, Ameritech did not provide any specific state and federal requirements that are required by statute or rule to be noticed to consumers through a bill insert. Moreover, Ameritech has not stated that each bill insert must be limited to a single topic. Ameritech's assertion that the requirement eliminates one third of a carrier's ability to communicate through bill inserts is true only if each can address but a single topic.

Ameritech also suggests that the Commission's attempt to regulate bill inserts is prohibited. However, Ameritech's effort in this regard is ineffective. Ameritech resorts to what can only be described as "drive-by" citations, i.e., referring to cases that appear to be controlling without actually establishing that they are indeed controlling. Upon inspection, it is clear that the cases identified by the Company are not apposite to the immediate issue.

In Pacific Gas & Electric Co. v. Public Utility Commission, 475 U.S. 1 (1986), the

California Public Utilities Commission attempted to require the utility to "include in its billing envelopes speech of a third party with which the utility disagrees." 475 U.S. at 4. In Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York, 447 U.S. 530 (1980), the utility commission attempted to prohibit "the inclusion in monthly electric bills of inserts discussing controversial issues of public policy." 447 U.S. at 532. In particular, the New York commission was reacting to a bill insert in which the utility had championed the benefits of nuclear power. Rather than order the utility to disseminate material expressing the contrary views of third parties, the commission prohibited "utilities from using bill inserts to discuss political matters…." 447 U.S. at 532. In both cases, the Supreme Court found the commission actions to be invalid. The Court, however, noted that the commission actions could be valid if they constituted "(i) a reasonable time, place, or manner restriction, (ii) a permissible subject matter restriction, or (iii) a narrowly tailored means of serving a compelling state interest." 447 U.S. at 535.

First, since the Commission here would not be *restricting* any utilities' ability to state its own positions, the cases mentioned by Ameritech do not apply. Second, even if the cases could be established to apply – which, again, Ameritech did not try to do – the General Assembly has articulated a compelling interest in requiring telecommunication carriers to meet certain minimal standards (and additional standards determined by the Commission) related to service quality. Various parties and Staff have asserted that in order to render those requirements effective, customer education is mandatory. The bill inserts, and other means of communication, have been proposed as methods for accomplishing this task. The ALJ has agreed that these are reasonable requirements that do not impose an undue burden on the carriers. Furthermore, these are requirements specifically and narrowly designed to promote compliance with the valid regulatory mandates of Section 13-712 of the PUA and constitute valid regulation of bill inserts.[4]

Ameritech's mentioning in passing of these cases amounts to nothing more than a hollow scare tactic. The Commission should reject Ameritech's position on this exception and retain the language in the proposed order.

Ameritech's solitary opposition to the space and format problems with bill messages is, at the very least, premature. As Ameritech itself notes, bill messages "may" exceed designed formats. (Ameritech BOE at 12.) Since the messages have not yet been developed, Ameritech's voicing of this concern amounts to but a speculative cavil. Certainly, in deriving bill messages, Staff and the carriers can account for the areas where carriers already market products and services to its customers and design messages that accommodate both the regulatory goal of customer education, and the carriers' goal of commercial exploitation of bill messages. For now, though, Ameritech has not provided any tangible evidence as to specific bill message requirements that prohibit Ameritech from meeting the requirements of this Part. The Commission should reject Ameritech's position on this exception and retain the language in the PO.

Lastly, Ameritech misinterprets the PO and Staff's position by the drafting of and/or the review of a carrier's educational materials. Staff would not be in the position of directing the content of the carriers' messages to their customers or imposing a prior restraint on a carrier's messages. The purpose of Staff providing education information

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[4] Certainly, the Supreme Court understood that there are bill inserts that a utility "might be ordered lawfully to include in the billing envelope." 447 U.S. at 543.

was to provide carriers with a plain English, universal message to be provided to consumers, to eliminate errors, deceiving language or marketing gimmicks in the educational materials, not to dictate. Staff also believes that providing a template for the educational material would assist the smaller carriers who do not have a marketing department to provide this service on its behalf. Staff plans to solicit the carriers to assist in drafting the education materials to be posted to the Commission's web site, so that the product developed would be a useful tool designed with, by, and for the carriers, not to implement Staff's view without first seeking carrier input. The Commission should reject Ameritech's position on this exception and retain the language in the proposed order.

Worldcom's Position

Worldcom recommends that the rule should be modified to permit bill messages or welcome kits or welcome packages to be used as a means to disseminate credit information prior to publication of the information in a directory. (Worldcom BOE at 2.) Worldcom objects to the requirement that education materials be submitted to the Commission Staff for review prior to the distribution or publication of such materials to a carrier's customers. (Worldcom BOE at 3 – 4.)

Staff's Response

Staff concurs with Worldcom's recommendation that the rule be modified to permit bill messages, welcome kits or welcome packages as additional methods of providing customer education. Staff agrees that these methods achieve the goal of the legislature to provide customers with information regarding service quality standards, consumer compensation, other remedies, and applicable exclusions. Additionally, by identifying the above methods of consumer education as acceptable alternatives, Part 732 provides additional flexibility during the first quarter of a carrier's relationship with a newly acquired customer. Staff does not believe that this additional flexibility will be harmful to the consumer and may provide some benefit. For instance, carriers may use the welcome kits to provide new customers with a comprehensive source of information regarding the obligations of the carrier to its customer. Staff therefore recommends that the Commission accept Worldcom's recommendation and has provided rule language at the end of this section.

Worldcom's objection to the requirement that education materials be submitted to the Commission Staff for review before such materials can be sent to a carrier's customer relies upon an erroneous foundation. Worldcom characterizes this review process as an "approval" by Staff. (Worldcom BOE at 4.) The language of the proposed rule simply does not support this view. Staff's proposal, which was adopted by the proposed order, stated that Staff would "review" the materials, not approve them. (PO at 43.) However, Staff accepts Worldcom's recommended language requiring the educational information to be in substantially the same form as suggested by the Consumer Services Division and, as a result agrees to the corresponding deletion of the Staff review process. Staff recommends that the Commission accept this recommendation made by Worldcom and has provided rule language at the end of this section.

AT&T's Position

AT&T proposes that direct mailings be added as an alternative to bill inserts and that, as a result, companies would have the option to use either bill inserts or direct mailings for customer education. (AT&T BOE at 1 – 2.) AT&T also requests that the requirement to include a specific monthly bill message be stricken. AT&T requests this change because it has a national billing system which would require all of its customers to view the monthly bill message pertaining to Illinois customers only. AT&T argues that this would cause customer confusion and burden AT&T with additional calls into the company's customer service center. (AT&T BOE at 2 – 3.)

Staff's Response

Staff accepts AT&T's recommendation to giving carriers the option of choosing a direct mail or bill inserts as a means of customer education. Staff recommends that the Commission accept AT&T's recommendation and has provided rule language at the end of this section.

Staff is not convinced by AT&T's arguments that Illinois' monthly bill message will necessitate additional "why not me" calls to its customer service centers for the following reasons. AT&T specifically labels the information for Illinois customers only. The monthly bill message is general enough to apply to any service quality standards that may affect AT&T in other states where AT&T provides service. For example, the language states that credits or other remedies may apply, but does not specifically cite a dollar amount for the credits nor does it list alternative telephone service as a remedy. Staff believes that Illinois does not exclusively have service quality standards for repair and installation and that this monthly bill message would most likely apply to similar requirements of many, if not all, of the states where AT&T is providing service. Finally, Staff also believes that if those states where AT&T provides service did not require credits, that the companies normally provide customer credits in their tariffs on file in each state. Thus, the harm to AT&T is minimal and the Commission should reject AT&T's position on this exception and retain the language in the proposed order.

Citizens' Position

Citizens opposes the expansion of the customer notification requirements to require LECs to place education materials in directories and as a quarterly bill message until the information is included in the telephone directory and a specific monthly billing statement. (Citizens BOE at 6 – 10.)

Staff's Response

At the outset, Staff objects to Citizen's Exception on this point. Citizen's argument is postulated from language that was presented and discussed at *workshops*. In presenting such language as Staff's position, Citizens purposely distorts the process that has been followed in this matter. A reading of the draft Section 732.50 presented by Staff as an Attachment to its initial Comments clearly demonstrates that the *workshop* discussions relied upon by Citizens did not carry forward onto the record. Workshop product, *per se*, is considered inappropriate for discussion and argument on the formal record. In that respect, workshop products and discussions are treated identically to positions taken in civil litigation negotiations, i.e., no party is to be held to those positions on the record.[5]

That said, Staff does not believe the rule as amended by the ALJ takes away all discretion from the carriers to determine how to fulfill customer education requirements. The rule provides the minimum education requirements that the Commission expects carriers to fulfill to ensure that consumers are educated as to service standards, benchmarks, compensation, and additional remedies available to consumers. The Commission should reject Citizens' position on this exception and retain the language in the HEPO.

A separate point raised by Citizens does merit consideration. Staff supports Citizens' arguments to allow for alternative methods and the flexibility of providing information to consumers, such as e-bills, direct mail, bill inserts, bill messages, in addition to the directory. Staff also supports continuously educational forums provided by carriers through web sites, voice response units, or information posted in public locations. Staff recommends that the Commission accept Citizens' recommendations and has provided rule language at the end of this section.

GCI's Position

GCI recommends that carriers the required educational information for customers regarding service quality standards, consumer compensation, other remedies, and exemptions be prominently displayed on the telephone bill and in the front part of the

[5] Staff notes that this is the second occasion on this record that it has had to make an objection to materials in Citizens' pleadings. The first occurred when Citizens improperly made initial comments in its Reply Comments. Although that overstep was resolved by Citizens' making a subsequent revised filing, Staff finds it disturbing that a carrier apparently feels it *de rigueur* is to freely disregard Commission practice.

directories along with other telephone service information. (GCI BOE at 12.)

Staff's Response

Staff believes that GCI's recommendation is reasonable and will not pose a burden on the carriers, but will certainly assist in the education of consumers. Staff recommends that the Commission accept GCI's recommendation and has provided rule language at the end of this section.

Proposed Order Language

Each telecommunications carrier shall include in the informational pages of regularly published telephone directories educational material(s) about the requirements to install, repair, and meet appointments within the specified amount of time, the availability and issuance of customer credits and alternative telephone service, and the applicable exemptions. Until such time as a telecommunications carrier's directory contains such educational material(s), the telecommunications carrier shall distribute at least once each quarter for receipt by customers bill inserts, bill messages or direct mailings containing the identified information. To meet its first quarter obligations, a carrier may include this information in welcome kits or welcome packages that it sends to newly acquired customers. The bill inserts, bill messages or direct mailings shall also indicate that the information contained therein will appear in the telecommunications carrier's next directory and the approximate time that that publication will occur.

Each telecommunications carrier shall also include in its monthly bill to each customer the following statement: "The law obligates all telephone carriers to provide installation and repair in a timely manner. Credits or other remedies may be available for delays in repair, installation or missed appointments." Once a telecommunications carrier's directory is published containing the educational material(s) described in this Section 732.50, the monthly bill statement shall also direct customers to the specific portion of the directory for more information. Until the telecommunications carrier's directory is published, the monthly bill statement shall advise customers of the quarterly bill inserts or direct mailings and indicate that additional information may be obtained by contacting the telecommunications carrier directly.

Educational material(s) shall be prominently displayed, clear, accurate and printed in bold and type of sufficient size and readability. Information in the telephone directory shall be prominently displayed in the front part of the directory with the telephone

service information. The Consumer Services Division of the Commission shall develop and post on the Commission's website standard ~~minimum~~ education material language to be used by telecommunications carriers in their bill inserts, bill messages, direct mailings, welcome kits, welcome packages, and directories. The educational information disseminated by telecommunications carriers shall be in substantially the same form as that suggested by the Consumer Services Division. ~~Any telecommunications carriers who does not use the language posted on the Commission's website shall provide the educational material(s) that it intends to use to the Consumer Services Division for review 120 days prior to being issued.~~
Each telecommunications carrier shall also provide a forum or forums for continuous public education that may include, but not be limited to, company web site(s), voice response unit(s), or information posted in public location(s).

WHEREFORE, Staff respectfully requests that the Proposed Order, as filed, and with the changes agreed to above by Staff, be presented for approval to the Commission.

Respectfully submitted,

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